

Message Text

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ACTION DLOS-09

INFO OCT-01 EUR-12 EA-12 IO-14 ISO-00 FEA-01 ACDA-12

AGRE-00 AID-05 CEA-01 CEQ-01 CG-00 CIAE-00

COME-00 DODE-00 DOTE-00 EB-08 EPA-04 ERDA-07

FMC-02 TRSE-00 H-02 INR-07 INT-05 JUSE-00 L-03

NSAE-00 NSC-05 NSF-02 OES-07 OMB-01 PA-02 PM-05

PRS-01 SP-02 SS-15 USIA-15 /161 W

-----022926 130234Z /64

R 121825Z DEC 77

FM AMEMBASSY LONDON

TO SECSTATE WASHDC 1192

INFO AMEMBASSY BONN

AMEMBASSY PARIS

AMEMBASSY THE HAGUE

AMEMBASSY TOKYO

AMEMBASSY ROME

AMEMBASSY OTTAWA

AMEMBASSY MOSCOW

USMISSION USUN NEW YORK

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E.O. 11652: N/A

TAGS: PLOS, EWWT, UK, US

SUBJECT: LEGISLATION RE CLEAN WATER ACT AND DEEP SEABED

MINING: UK CONCERNS RE SHIPPING PROVISIONS AND RELATED

ISSUES

REF: (A) STATE 288761 (NOTAL); (B) STATE 202810 (NOTAL)

1. SUMMARY: UK OFFICIALS DEC. 6 DISCUSSED WITH EMBASSY
DISQUIET AND SPECIFIC CONCERNS OF UK WITH LEGISLATION IN
HOUSE AND SENATE REGARDING THE CLEAN WATER ACT AND DEEP

SEABED MINING (DSM). LEGISLATION REGARDING CLEAN WATER

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ACT HAS APPARENTLY PASSED THROUGH CONFERENCE COMMITTEE
AND PRESIDENTIAL VETO NOT CONSIDERED POSSIBLE. DESPITE
ADMINISTRATION ASSURANCES TO DATE, BRITISH BELIEVE
PASSAGE OF BILL WILL MAKE LIFE IMPOSSIBLE IN LAW OF THE
SEA (LOS) CONFERENCE. UK INTERESTED IN DISCUSSING WHAT
REMEDIAL ACTION IS AVAILABLE WITH US LOS DEL. ON DEEP
SEABED MINING LEGISLATION UK CONCERNS CENTER ON POTENTIAL

PROBLEM OF FLAG DISCRIMINATION AND INFRINGEMENT OF HIGH SEAS FREEDOMS BUT EXTEND TO WHOLE PROBLEM OF INTERNATIONAL FRAMEWORK FOR DEEP SEABED MINING IMPLICIT IN LEGISLATION AND PROPOSALS ON QUOTE RECIPROCATING STATES UNQUOTE. UK HAS NOT AS YET FORMED ITS POSITION ON THE LEGISLATION, BUT IT WILL ATTEMPT TO PROVIDE A PIECE OF PAPER SOON SETTING OUT ITS INITIAL CONCERNS MORE PRECISELY THAN DISCUSSION ALLOWED. IF TIME PERMITS AT LOS MEETING IN NEW YORK WEEK OF DEC. 12, UK MAY ATTEMPT AN EXPLORATORY EXCHANGE OF VIEWS AND EVALUATE USEFULNESS OF DISCUSSING PERCEIVED PROBLEMS WITH THOSE OFFICIALS IN THE DEPT. WHO HAVE BEEN PREPARING ADMINISTRATION PROPOSED AMENDMENTS TO THE LEGISLATION. END SUMMARY.

2. AT REQUEST OF AMBASSADOR RONALD ARCULUS, HEAD OF THE UK LOS DEL, EMBASSY SHIPPING ATTACHE ATTENDED MEETING DEC. 6 AT UK FOREIGN AND COMMONWEALTH OFFICE (FCO) TO DISCUSS DISQUIET AND SPECIFIC CONCERNS OF UK WITH REGARD TO HOUSE AND SENATE BILLS AMENDING THE CLEAN WATER ACT (HR 3199 AND S 1952) AND DEALING WITH DEEP SEABED MINING (HR 3350, S 2053, S 2085 AND S 2168). THE DISCUSSION WAS MORE OF AN EXPLORATION OF POSSIBLE PROBLEMS THAN A PREPARED DEMARCHE. PARTICIPATING IN ADDITION TO ARCULUS WERE HENRY DARWIN AND MORRIS DALTON OF FCO, HARVEY IVY AND MAUREEN KELLY OF DEPT. OF INDUSTRY, AND DENNIS ATIEN OF DEPT. OF TRADE. ATIEN HAS REPLACED MICHAEL FIELDER UNCLASSIFIED

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ON UK LOS TEAM.

3. THE LEGISLATION AMENDING THE CLEAN WATER ACT HAS BEEN THE SUBJECT OF A NUMBER OF EARLIER EXCHANGES FROM UK AS WELL AS OTHER DEVELOPED COUNTRIES INITIATED BY REFTEL (B). BRITISH UNDERSTAND THAT DESPITE CONCERN OF HIGH-LEVEL US OFFICIALS, ADMINISTRATION WAS UNABLE TO HAVE THE BILLS AMENDED, THAT THEY HAVE NOW PASSED THROUGH A HOUSE-SENATE CONFERENCE COMMITTEE, AND THAT BECAUSE OF OTHER ELEMENTS OF THE LEGISLATION A PRESIDENTIAL VETO IS NOT POSSIBLE. UK REITERATES THAT LEGISLATION'S PROHIBITION ON DISCHARGES OF HAZARDOUS SUBSTANCES IN WATERS ABOVE THE US CONTINENTAL SHELF OR WATERS OF THE US 200-MILE FISHERIES ZONE GOES BEYOND THE LOS CONFERENCE ICNT TO THE DETRIMENT OF THE US POSITION, WHILE IT WILL GIVE JOY TO THE CANADIANS WHOSE CLAIMS TO POLLUTION CONTROL AUTHORITY OVER NORTHERN AND ARCTIC WATERS THE US HAS BEEN OPPOSING. ARCULUS HAS HEARD THAT ADMINISTRATION OFFICIALS ARE TALKING OF VARIOUS WAYS TO MITIGATE THE DAMAGE RANGING FROM PUTTING SOMETHING IN THE OIL POLLUTION SUPER FUND BILL TO INTERPRETING THE LANGUAGE OF THE LEGISLATION FAVORABLY. HE FEARS, HOWEVER, THAT THE LEGISLATION WILL

QUOTE MAKE LIFE IMPOSSIBLE IN UNLOS UNQUOTE. UK IS
URGENTLY CONSIDERING WHAT TO DO AND WOULD APPRECIATE THE
BENEFIT OF THE US ADMINISTRATION'S THINKING.

4. UK APPRECIATIVE THAT ADMINISTRATION HAD RESTRICTION
OF TRANSPORT VESSELS TO US FLAG REMOVED FROM DEEP SEABED
MINING (DSM) LEGISLATION AND THROUGH RECIPROCATING STATE

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FM AMEMBASSY LONDON
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INFO AMEMBASSY BONN
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CONCEPT IS ATTEMPTING TO ALLOW OTHER THAN US FLAG MINING
AND PROCESSING VESSELS TO BE USED AT US LICENSED DSM
SITES. HOWEVER, IN UK VIEW THE ENTIRE SCHEME FOR DSM
PROPOSED BY THE LEGISLATION INVOLVES FLAG DISCRIMINATION
AND SERIOUS GENERAL DEROGATION FROM HIGH SEAS FREEDOM.
UK HAS NOT HAD TIME TO MAKE A DETAILED EXAMINATION OF
LEGISLATION AND PREPARE COMMENTS, BUT IT WISHES TO FOCUS
ON CERTAIN POINTS WITH THE HOPE OF A DEEPER AND BROADER

EXAMINATION OF THE SUBJECT AS SOON AS FEASIBLE. THE COMMENTS FOCUS PRINCIPALLY ON HR 3350 AS IT WOULD STAND WITH THE ADMINISTRATION PROPOSED AMENDMENTS.
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5. THE SECTION RESTRICTING MINING OR PROCESSING VESSELS TO THE US OR RECIPROCATING STATE FLAGS IS SEC 103(C)(2), LICENSES FOR EXPLORATION AND PERMITS FOR COMMERCIAL RECOVERY, STATUTORY RESTRICTIONS AND CONDITIONS. UK QUESTIONS LOGIC OF THIS SECTION AS IT WOULD BE AMENDED BY ADMINISTRATION PROPOSALS. POINT OF SECTION WOULD SEEM TO BE TO GIVE US AUTHORITIES EFFECTIVE CONTROL OVER VESSELS MINING OR PROCESSING ON A US LICENSED SITE RATHER THAN TO FORCE VESSELS ONTO US REGISTRY. ALTHOUGH CONGRESSIONAL REPORT ON DSM BILL EXPRESSED HOPE THAT VESSELS WOULD BE CONSTRUCTED IN US AND SPEAKS OF NEED TO HAVE VESSELS AVAILABLE TO US IN TIME OF NATIONAL EMERGENCY, SUCH CONSIDERATIONS ARE NOT CENTRAL AND MAY EVEN BE CONTRARY TO A NATIONAL DSM LICENSING REGIME COVERING HIGH SEAS REGIONS WHICH THROUGH ACCEPTANCE BY OTHER MAJOR INDUSTRIAL STATES WILL SERVE AS AN ACCEPTABLE INTERNATIONAL APPROACH TO DSM LICENSING UNTIL AN INTERNATIONAL REGIME CAN BE NEGOTIATED. UK THINKS THAT CONTROL COULD BE ACHIEVED OVER OPERATIONS AND VESSELS ON A SITE THROUGH THE TERMS OF THE LICENSE AND THAT QUESTIONS OF FLAG STATE DISCRIMINATION COULD BE SIDE STEPPED.

6. UK SEES DIFFICULTIES INCLUDING BUT GOING BEYOND FLAG DISCRIMINATION IN SECTION 108, RECIPROCATING STATES, PAGE 59F OF ADMINISTRATION PROPOSED AMENDMENTS. DESIGNATION OF A RECIPROCATING STATE AND THE TERMS OF THE RELATIONSHIP ARE DICTATED BY THE LEGISLATION. NEITHER THE EQUAL SOVEREIGNTY AND RIGHTS OF OTHER STATES IN THE HIGH SEAS ZONES NOR THE NEED FOR NEGOTIATION IS RECOGNIZED. THE UK SEES SOME IMPROVEMENT IN THE ADMINISTRATION'S SUBSTITUTION OF QUOTE COMPATIBLE UNQUOTE FOR QUOTE COMPARABLE UNQUOTE (SEC 108(A)(1) OF HR 3350 AND
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ADMINISTRATION PROPOSAL SEC 108(A)(4)), BUT IT QUESTIONS THE CHOICE OF SOME CRITERIA AND HOW A VALUE JUDGMENT OF ANOTHER STATE'S PROCEDURES EMPLOYED TO DENY DESIGNATION CAN BE COMPATIBLE WITH SOVEREIGN EQUALITY OF STATES ON THE HIGH SEAS. SPECIFICALLY, UNDER 108(A)(4)(A), UK FINDS STRANGE THE INCLUSION OF QUOTE THE SAFETY OF LIFE

AND PROPERTY AT SEA UNQUOTE SINCE SAFETY OF LIFE AT SEA IS COVERED BY THE IMCO SAFETY OF LIFE AT SEA (SOLAS) CONVENTION AND ANY REGULATION OF THIS AREA ON THE HIGH SEAS IS A FLAG STATE PREROGATIVE. THE REFERENCE TO PROPERTY IS BEWILDERING TO THE UK OFFICIALS ALTHOUGH THEY SUPPOSE THAT IT MAY HAVE A US LEGAL REFERENCE. ON THE MATTER OF VALUE JUDGMENTS WHICH MIGHT BE INVOLVED, UK OFFICIALS NOTED CONCERNING THE CRITERIA IN SEC 108(A) (4)(A), QUOTE ADEQUACY OF MEASURES FOR THE PROTECTION OF THE MARINE ENVIRONMENT UNQUOTE THAT THE US REQUIRES ELABORATE AND FORMAL ENVIRONMENTAL IMPACT STATEMENTS IN EXERCISING ITS AUTHORITY WHILE THE UK EMPLOYS MORE INFORMAL EVALUATIONS BY CIVIL SERVANTS AND MINISTERS. THEY HAVE SOME CONCERN THAT THE DSM BILL MAY FORCE US DOMESTIC METHODS AND PROCEDURES UPON OTHER COUNTRIES AND THEIR NATIONALS.

7. DARWIN OF FCO NOTED AT ONE POINT IN ADMINISTRATION PROPOSED AMENDMENTS USE OF THE WORD QUOTE AGREEMENTS UNQUOTE WHICH HE THOUGHT ADMINISTRATION LEGAL DRAFTSMEN ON REFLECTION MIGHT LIKE TO WEAKEN. IN NEW SECTION 4, TRANSITIONAL NATURE OF THE ACT, (2), IT IS PROPOSED THAT A SUBSTITUTE FOR THE DSM LEGISLATION, IN THE EVENT AN LOS TREATY DOES NOT CREATE ONE, WOULD BE A MULTILATERAL TREATY OR QUOTE OTHER INTERNATIONAL AGREEMENTS UNQUOTE. THIS LAST HE SUPPOSES WOULD COVER A SERIES OF BILATERAL AGREEMENTS, BUT HE NOTES THAT A NUMBER OF COUNTRIES MAY NOT WISH TO HANDLE THE MATTER THROUGH AN EXECUTIVE AGREEMENT AS THE US COULD. FOR SOME IT MIGHT REQUIRE APPROVAL OF THEIR LEGISLATIVE BODIES. HE GAVE THE UNCLASSIFIED

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EXAMPLE OF THE NETHERLANDS WHERE APPROVAL HE THOUGHT WOULD TAKE AT LEAST TWO YEARS.

8. UK HAS NOT THOUGHT THROUGH THE MATTER OF AN INTER-

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NATIONAL REGIME EMERGING FROM THE NATIONAL LEGISLATION OF
MAJOR STATES AND BILATERAL UNDERSTANDINGS AMONG THEM,
BUT IT SEES PROBLEMS. IF CONTROL CAN COME THROUGH A
LICENSE WITHOUT FLAG DISCRIMINATION OR EXCLUSION OF ANY
MEMBERS OF CONSORTIA THAT HAVE EMERGED OR MAY DEVELOP,
THEN IT WOULD BE USEFUL TO CONSIDER TO WHAT EXTENT A
SYSTEM OF RECIPROCITY IS NECESSARY AND TO AVOID THE
DANGERS IMPLICIT IN SUCH A SYSTEM. UK WOULD LIKE TO HAVE
MORE DETAILED DISCUSSIONS WITH CONCERNED US OFFICIALS,
BUT THIS MAY BE A TOPIC THAT AN EXPERT GROUP OF THE
LIKE-MINDED COUNTRIES WILL NEED TO CONSIDER.
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9. COMMENT: EXTRATERRITORIALITY OF US LAWS, THE APPLI-
CATION OF US LAWS BEYOND US TERRITORIAL BOUNDARIES TO
INTERNATIONAL BUSINESS OPERATIONS, HAS BEEN A MATTER OF
CONSIDERABLE COMMENT AND CONCERN IN BRITAIN DURING THE
LAST YEAR, BOTH IN AND OUTSIDE GOVERNMENT. DSM LEGISLA-
TION AROUSES PARALLEL FEARS, PARTICULARLY AS IT INVOLVES
HIGH SEAS FREEDOMS. EMBASSY BELIEVES CONSULTATIONS WITH
UK WOULD BE USEFUL IN IDENTIFYING CONCRETE DIFFICULTIES
UK AND OTHER DEVELOPED COUNTRIES MAY FIND IN OUR DSM
LEGISLATION AND DISSIPATING VAGUE APPREHENSIONS. EMBASSY

IS ALSO STRUCK THAT SIMPLE EXTENSION OF DOMESTIC
STANDARDS AND PROCEDURES TO DSM OPERATIONS MAY SO COMPLI-
CATE THEIR EXISTENCE THAT, IF AN INTERNATIONAL REGIME
IS NOT NEGOTIATED, DSM CONSORTIA MAY GO FORUM SHOPPING.
UNLIKELY THOUGH IT MAY BE, THE WORLD COULD END UP WITH
A QUOTE LIBERIA OF DEEP SEABED MINING UNQUOTE.

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Message Attributes

Automatic Decaptioning: X
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Channel Indicators: n/a
Current Classification: UNCLASSIFIED
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Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
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Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
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Disposition Event:
Disposition History: n/a
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Original Previous Classification: n/a
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TAGS: PLOS, EWWT, UK, US
To: STATE
Type: TE
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